

## 1 SENATE JOINT RESOLUTION NO. 16

2 INTRODUCED BY SPRAGUE

3 BY REQUEST OF THE SENATE FISH AND GAME STANDING COMMITTEE

4

5 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF  
6 MONTANA REQUESTING THAT CONGRESS REVISE THE ENDANGERED SPECIES ACT TO ALLOW  
7 HAZING OF CARNIVORES LISTED AS AN ENDANGERED OR THREATENED SPECIES; AND URGING THE  
8 STATE ATTORNEY GENERAL TO JOIN THE STATE IN ANY LEGAL ACTION BROUGHT TO ALLOW THE  
9 DEFENSE OF PROPERTY AGAINST LISTED PREDATORS.

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11 WHEREAS, the grizzly bear and the gray wolf have been declared by the U.S. Fish and Wildlife Service  
12 to be endangered OR THREATENED species, notwithstanding plentiful numbers of grizzly bears and wolves in  
13 Montana; and

14 WHEREAS, 16 U.S.C. 1532 defines the term "take" to include to harass or attempt to harass an  
15 endangered OR THREATENED species; and

16 WHEREAS, 50 CFR 17.3 defines "harass" in the definition of "take" as "an intentional or negligent act  
17 or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly  
18 disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering"; and

19 WHEREAS, in *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, 515 U.S. 687  
20 (1995), the United States Supreme Court noted that several of the words in the definition of "take", including  
21 "harass", refer to actions or effects that do not require direct applications of force; and

22 WHEREAS, 16 U.S.C. 1535 directs the Secretary of the Interior to cooperate with the states to the  
23 maximum extent practicable in administering the Endangered Species Act; and

24 WHEREAS, even though 16 U.S.C. 1540(a)(3) provides that a civil penalty may not be imposed on a  
25 defendant who kills a AN ENDANGERED OR threatened species in self-defense or in the defense of others, it is  
26 unreasonable to expect a property owner to stand idly by and allow an endangered OR THREATENED species to  
27 threaten and kill livestock or pets or threaten family members; and

28 WHEREAS, in *Christy v. Hodel*, 857 F.2d 1324 (9th Cir. 1988), it was held that the Endangered Species  
29 Act and the grizzly bear regulations as applied to prevent owners of livestock from killing grizzly bears to protect  
30 their sheep against imminent destruction did not deny them equal protection of the laws and did not constitute

1 a "taking" of the sheep without just compensation; and

2 WHEREAS, the definition of "take" in 16 U.S.C. 1532 was not written in contemplation of large  
3 carnivores being included as endangered OR THREATENED species; and

4 WHEREAS, a property owner should be able to haze wolves and grizzly bears away from livestock and  
5 residential buildings without fear and if necessary to kill the marauding carnivores to protect private property;  
6 and

7 WHEREAS, unchecked predation by carnivores listed as endangered OR THREATENED species will almost  
8 certainly impact wildlife resources, livestock, pets, and outdoor recreation; and

9 WHEREAS, these negative impacts will also have a profound economic and social consequence for  
10 Montana people and communities.

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12 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF  
13 THE STATE OF MONTANA:

14 That the Governor, the Montana Congressional Delegation, and the U.S. Secretary of the Interior be  
15 strongly urged to seek a revision to the Endangered Species Act allowing reasonable efforts by property owners  
16 to protect property and people against carnivores listed as endangered OR THREATENED species.

17 BE IT FURTHER RESOLVED, that the Montana Attorney General be urged to join the state in any  
18 lawsuit establishing or clarifying the right of Montana citizens to protect their property and their lives against  
19 carnivores listed as endangered OR THREATENED species.

20 BE IT FURTHER RESOLVED, THAT THE MONTANA DEPARTMENT OF FISH, WILDLIFE, AND PARKS CONTINUE  
21 ITS EFFORTS TO ENCOURAGE THE U.S. FISH AND WILDLIFE SERVICE TO INTERPRET "NORMAL BEHAVIORAL PATTERNS"  
22 IN A WAY THAT DOES NOT INCLUDE BEHAVIOR THAT THREATENS LIVESTOCK, PETS, OR HUMANS.

23 BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the  
24 Governor, the Montana Congressional Delegation, the Montana Attorney General, and the U.S. Secretary of the  
25 Interior.

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